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SENATE COMMITTEE REPORT

FURTHER

2/15/89

DATE TURNED INTO OFFICE 2/22/89

Mr. President:

FINANCE Committee considered SB 70

certain testing in contested paternity actions; amending Rule 35, Alaska Rules of Civil Procedure; efd

and recommended

replace with CS SB 70 (FIX)) same title
 or adopt CS) new title
 attached amendment(s) and technical title change (HB only)
 letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new one updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

[Signature] Duncan
[Signature] Pearce

OTHER RECOMMENDATIONS

[Signature] (No Rec)

[Signature] Frank

[Signature] (No - MASS)
Chairman signature and recommendation

Committee Backup attached

[Signature] Co-Chair
No Rec. Binkley

R/O 3FC 2-22-89

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: CS SB 70 (FIN)
Publish Date: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to certain
testing in contested paternity actions
Sponsor: Senator Uehling
Requestor: Senate Finance Committee

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Division

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The committee substitute essentially codifies the current procedure under which the State recovers its costs for blood testing to establish paternitys and imposes no additional administrative costs on the Child Support Enforcement Division.

Prepared By: Linda Langston
Division: Child Support Enforcement Division

Phone: 276-3441
Date: February 22, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: 2/29/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

RECEIVED
FEB 27 1989

LEGISLATIVE FINANCE

Offered: 2/15/89
Referred: Finance

6-0231H

Original sponsors: Uehling, Pearce,
and Sturgulewski

1 IN THE SENATE

Finance
BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 70 (*Finance*
~~Judiciary~~)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to certain testing in contested
7 paternity actions; amending Rule 35, Alaska Rules of
8 Civil Procedure; and providing for an effective
9 date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 25.20.050 is amended by adding new subsections to read:

12

(e) On request of a party in a contested paternity action to

13

which the state is a party, the court shall order the mother, the

14

child, and the putative parent to submit to a blood test, tissue-type

15

test, protein comparison, or other scientifically accepted procedure

16

designed to determine the statistical probability that the putative

17

parent is a legal parent of child in question, ~~except that the~~

18

~~order may not apply to a person who has been found under applicable~~

19

~~federal regulations to have good cause not to cooperate.~~

20

(f) If the child support enforcement agency is a party in a

21

contested paternity action, the agency shall request the court to

22

order the tests and procedures described in (e) of this section. The

23

agency may recover the costs of tests as a cost of the action, except

24

that no costs shall be recovered from a person who is a recipient of

25

aid under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent

26

Children). ~~Costs recovered under this subsection may not conflict~~

27

~~with requirements of applicable federal regulations.~~

28

* Sec. 2. AS 47.23.040(a) is amended to read:

29

(a) The agency shall appear on behalf of minor children or their

1 mother or legal custodian or the state and initiate efforts to have
2 the paternity of children born out of wedlock determined by the court
3 on voluntary application by the mother or other legal custodian. When
4 the agency is a party in a contested paternity action, it shall re-
5 quest and pay for tests and procedures under AS 25.20.050(f). The
6 agency may recover the costs of the tests as a cost of the action,
7 except that no costs shall be recovered from a person who is a recipi-
8 ent of aid under AS 47.25.310 - 47.25.420 (Aid to Families with Depen-
9 dent Children). ~~Cost recoveries authorized under this subsection may~~
10 ~~not conflict with requirements of applicable federal regulations.~~

11 * Sec. 3. AS 25.20.050(e), enacted by sec. 1 of this Act, has the
12 effect of amending Civil Rule 35 by requiring a court in a contested pater-
13 nity action to which the state is a party to order certain genetic tests on
14 the request of a party.

15 * Sec. 4. This Act takes effect November 1, 1989.

SB 70

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

MEMORANDUM

TO: Senate Finance Committee

FROM: Senator Rick Uehling *R. Uehling*

DATE: February 22, 1989

RE: Summary of Proposed Amendments

The proposed amendments before you serve to delete any references in this bill to the Code of Federal Regulations.

During the Senate Judiciary hearing, a concern was raised as to whether or not it was appropriate to include the CFR references in the statute.

My office contacted Ardith Lynch of the Fairbanks Attorney General's Office and Andy Hemenway, staff attorney to the House Judiciary Committee, and it was their recommendation that the language be deleted, as the State was responsible for the requirements in the Code of Federal regulations regardless of the language of the State statutes.

The Department of Revenue has also reviewed the proposed changes, and has no objection to the language deletions.

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

Bill Summary: CS SB 70

CS SB 70 has the effect of amending Civil rule 35 by requiring a court in a contested paternity action to order certain genetic tests on the request of a party.

CS SB 70 requires the Child Support Enforcement Agency to pay for tests and procedures which it orders. CS SB 70 also describes the process to be used by the Child Support Enforcement Agency to recover the costs for the tests.

The federal Act provides for a 90/10 federal/state match to pay for the test costs which Child Support Enforcement incurs as a result of this legislation which are not recoverable.

2/8/89

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

SECTIONAL ANALYSIS CS SB 70

Following is a sectional analysis of CS SB 70, a bill relating to the genetic testing requirements of the Federal Family Support Act of 1988.

Sec. 1 arises from section 111(b) of the federal Act. That section requires the state "to require the child and all interested parties in a contested paternity case to submit to genetic tests upon request of any such party... (except in cases where the individual involved has been found under section 402(a)(26)(B) to have good cause for refusing to cooperate)." AS 25.20.050(e) implements this requirement. AS 25.20.050(f) directs the CSEA to be the requesting party when genetic testing is at issue. This means that CSEA will bear the costs of the tests because court rules place the costs on the requesting party. However, the federal Act allows the state to recover the costs of the test. AS 25.20.050(f) specifies that the agency may recover the costs of the paternity tests through the civil recovery process, except that no person receiving AFDC can be required to pay for the tests.

Sec. 2 makes parallel amendments in the CSEA statutes.

Sec. 3 notes that a court rule is affected by this bill. Genetic testing is currently at the discretion of the court on a showing of good cause. This bill would make the testing mandatory on the request of a party.

Sec. 4 gives the bill the effective date required by the federal Act.

DEPARTMENTAL RESPONSE

Department of Revenue

SB 70

"An Act Relating to certain testing
in contested paternity actions;
amending Rule 35."

1-23-89

SECTION 1. We recommend changes in the language of new subsection (e) to read:

"AS 25.20.050 is amended by adding new subsections to read: (e) On request of a party in a contested paternity action, the court shall order the mother, the child, and the putative parent to submit to a blood test, tissue-type test, protein comparison, or other scientifically accepted procedure designed to determine the statistical probability that the putative parent is a legal parent of the child in question." We recommend striking the final clause of proposed subsection (e) ["except that the order may not apply to a person who has been found under applicable Federal regulations to have good cause not to cooperate."] because it is unnecessary. The Good Cause determination is made before a case reaches the stage of paternity establishment.

We strongly recommend revision of the new language in subsection (b) to read as follows: "(b) If the child support enforcement agency is a party in a contested paternity action, the agency shall request the court to order the tests and procedures described in (e) of this section. The agency may recover the costs of tests as a cost of the action, except that no costs shall be recovered from a person who is a recipient of aid under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent Children). Cost recoveries authorized under this subsection may not conflict with requirements of applicable Federal regulations.

SECTION 2. We strongly recommend a similar revision, as above, in the proposed language of this section. Our recommended revised language would read: "When the agency is a party in a contested paternity action, it shall request tests and procedures under AS 25.20.050 (f). The agency may recover the costs of tests as a cost of the action, except that no costs shall be recovered from a person who is a recipient of aid under AS 47.25.310-47.25.420 (Aid to Families with Dependent Children). Cost recoveries authorized under this subsection may not conflict with requirements of applicable Federal regulations.

SECTION 3. No objection. Recommend approval.

SECTION 4. No objection. Recommend approval.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907.465 3800

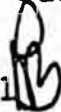
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1989

SUBJECT: Delegation of legislative authority
(Work Order No. 6-0661)

TO: Representative Max Gruenberg
Co-Chairman, House Judiciary Committee

FROM: Richard A. Bradley 
Legislative Counsel

Mark Handley has asked that we comment on the question presented by the adoption of federal law or regulations by reference in state statutes. An example of this is found in a Governor's bill: HB 70. Sec. 3 of the bill provides that the department "shall pay for prescribed drugs under AS 47.07.030(b) in accordance with 42 C.F.R. 447.331 -- 447.334.

Perhaps the best argument for not incorporating Federal references, particularly to regulations but also to laws, is that the Federal authorities may change the Federal laws. If they do, the references are either disregarded ("we know what was intended by the law") or they cripple the law.

A good case can be made that such an adoption is unconstitutional as a delegation of legislative authority. Whether it is, or not, may be unimportant because we believe that it is done frequently and necessarily in many areas where state officers operate under Federal regulations that have a habit of changing frequently.

But the solution to the problem presented in HB 70 can be easily addressed quite constitutionally by granting the commissioner of health and social services the authority to adopt by regulation whatever formula the state wants-- as, for example, by saying that the department "shall pay for prescribed drugs under AS 47.07.030(b) under regulations adopted by the commissioner in conformity with applicable federal regulations." The regulatory framework permits rapid amendment of the regulations and yet a state officer with

MEMORANDUM

State of Alaska

Department of Labor

Comm	
Deputy	
SD ASST	
SA ASST	
Info Off	
Adm Asst	
Int Aud	
ASD	
ESD	
LS&S	
W/C	
CC:	
cc:	

TO: The Honorable Jim Sampson
Commissioner
Department of Labor

DATE: January 25, 1989

RECEIVED

FILE NO.:

JAN 23 1989

TEL. NO.:

465-3603

OFFICE OF THE COMMISSIONER

HB 71 - "An Act relating to elevator safety standards; and provided for an effective date"

Deborah E. Behr

FROM: Deborah E. Behr
Assistant Attorney General
Human Services-Juneau

In response to a House Labor and Commerce Committee inquiry, you have asked whether the latest edition of elevator standards code or inspection manual should be enacted in the statute, instead of naming a particular edition by year. I understand that this information is needed for a committee meeting to be held Thursday, January 26, 1989.

It is our opinion, that the incorporation of all future editions of the code or manual by reference cannot be adopted in law by inclusion of the phrase "latest edition." We reach this conclusion for the following reasons.

Problem

First, under Article II, Section 14 of the Constitution of Alaska, the Alaska State Legislature has been assigned the function to enact bills into law. In this situation, the legislature would be delegating the development of the content of future legislation to a non-state agency, the American Society of Mechanical Engineers which presently develops the code in question. We believe this delegation to be impermissible under these circumstances, since the legislature would be unaware of the contents of future amendments at time of enactment of the bill into law. Second, contents of future editions of the code may be contrary to state law or violative of the state constitution. There would be no legislative review to avoid such law taking effect. Third, the adoption of a future code by reference may violate Article II, Section 15 of the Constitution of Alaska, since the Governor would have no meaningful way to exercise his veto power over future unknown amendments, which may be contrary to law or not in the best interest of Alaska. Finally, the adoption of the latest edition may cause confusion to the courts and the general public as to which standards apply. Under such a situation, the Department of Labor may find difficulty enforcing compliance with the standards under AS 18.60.820.

Reason

The Honorable Jim Sampson
Commissioner
HB 71 - elevator safety

January 25, 1989
Page 2

If the legislature wishes to avoid having frequently to amend the statute to keep pace with current editions of the code or manual, one approach might be to authorize the Department of Labor to adopt standards in regulation. By giving regulatory authority, the department could have the flexibility to adopt standards to changing conditions, without having to seek legislative modification. Since the legislature has the power to annul regulations, the legislature could still perform its oversight of these functions. See AS 44.62.320.

Solution.

If you have further questions, please do not hesitate to contact me.

DEB:jh

cc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Legislative Liason

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to certain
testing in contested paternity actions.
Sponsor: Senator Uehling
Requestor: Senate Judiciary

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The committee substitute essentially codifies the current procedure under which the State recovers its costs for blood testing to establish paternitys, and imposes no additional administrative costs on the Child Support Enforcement Division.

Prepared By: Linda Langston
Division: Child Support Enforcement Division

Phone: 276-3441
Date: February 15, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: February 15, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Submitted This morning to Sec. Sec.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: CS SB 70 (HESS)
Publish Date: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to certain
testing in contested paternity actions.
Sponsor: Senator Uehling
Requestor: Senate HESS

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Division

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The committee substitute essentially codifies the current procedure under which the State recovers its costs for blood testing to establish paternitys, and imposes no additional administrative costs on the Child Support Enforcement Division.

Prepared By: Linda Langston
Division: Child Support Enforcement Division

Phone: 276-3441
Date: February 7, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: 2/8/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

2/7/89
= (Hess) AB
Jud
Fin

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 70
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to certain testing
in contested paternity actions.
Sponsor: Senator Uehling
Requestor: Senate HESS

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Agency
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	63.1	63.1	63.1	63.1	63.1	63.1
TRAVEL						
CONTRACTUAL	5.5	1.0	1.0	1.0	1.0	1.0
SUPPLIES						
EQUIPMENT	23.9	0	0	0	0	0
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	92.5	64.1	64.1	64.1	64.1	64.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	23.4	13.2	13.2	13.2	13.2	13.2
FEDERAL FUNDS	61.0	42.3	42.3	42.3	42.3	42.3
OTHER GF/PGM	8.1	8.6	8.6	8.6	8.6	8.6
TOTAL	92.5	64.1	64.1	64.1	64.1	64.1

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See attached analysis.

Prepared By: Linda Langston
Division: Child Support Enforcement Division

Phone: 276-3441
Date: February 6, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: February 6, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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FEB 7 1989

page ____ of ____

LEGISLATIVE FINANCE

SB 70

Bill Version SB 70
Analysis

	FY90	FY91	FY92	FY93	FY94	FY95
<u>Personal Services:</u>						
(2) PFT Clerk V's*	63.1	63.1	63.1	63.1	63.1	63.1
<u>Contractual:</u>						
Telephone installation, local/long distance costs	1.1	1.0	1.0	1.0	1.0	1.0
Space rental (104 sq.ft.)	4.4					
<u>Equipment:</u>						
Modular Furniture	21.0					
Purchase 2 data processing terminals	2.9					
Total	<u>92.5</u>	<u>64.1</u>	<u>64.1</u>	<u>64.1</u>	<u>64.1</u>	<u>64.1</u>

* Clerk V positions will be involved in the case management activities related to fee administration. Duties will include identifying cases, set-up, charging and collection of fees; parent location file maintenance; and the monitoring of parent status.